

Naval Inspector General



Washington Navy Yard, DC



Conscience of the Navy...Making a Difference!



Naval Inspector General Hotline Complaint Procedures

Conscience of the Navy...Making a Difference

Legal Implications of an IG Investigation



Legal Implications Overview

- Screening complaints for serious misconduct
- Right against self-incrimination
 - Military vs. civilian suspects
 - Right to counsel
- Right to remain silent
- Advisement against giving false information
- Remedies for violation of rights
- Immunity
- Subpoena power, authority to restrict disclosure



Screening Complaints for Serious Misconduct

- Refer questions regarding possible criminal offenses to:
 - SJA, GC, RLSO (Region Legal Service Office)
 - ISIC IG
 - Staff NCIS officer



Screening Complaints for Serious Misconduct (CONT.)

- If NCIS declines to investigate
 - IG may investigate
 - Command may investigate

- If NCIS closes the case short of a full investigation
 - NAVINSGEN may investigate or refer case to the relevant IG



Serious Misconduct Uncovered During the Investigation

- Witness discloses evidence of serious misconduct not previously alleged
 - **Witness is the wrongdoer**
 - Stop interview
 - Consult with counsel or NCIS immediately
 - **Witness is not the wrongdoer**
 - Complete the interview then screen case again



Right Against Self-incrimination Civilian Subjects

- If suspected of an offense **and** in **custodial setting**, witness has right to:
 - Be informed of nature of allegations
 - Remain silent
 - Be advised that anything he / she says can be used against him / her at trial
 - Has right to counsel during questioning
- Only NCIS conducts custodial interviews
 - Civilian Suspect's Acknowledgement and Waiver of Rights (OPNAV 5527/4)
 - <http://forms.daps.dla.mil/order/>



Right Against Self-incrimination

Military Suspects

- If suspected of a criminal offense, witness has (Article 31(b)) right to:
 - Be informed of nature of allegations
 - Remain silent
 - Be advised that anything he / she says can be used against him / her in trial by courts-martial



Right Against Self-incrimination Military Suspects

- If suspected of a criminal offense ***and*** in **custodial setting**, witness has right to:
 - Counsel during questioning
- Military Suspect's Acknowledgement and Waiver of Rights (Form OPNAV 5527/3)



Invoking Right to Remain Silent

- Interviewee
 - May not invoke right to remain silent simply to avoid answering a question
 - May invoke right when his / her answer might be incriminating
 - Even in the absence of rights advice



Remedies for Violation of Art. 31

and / or Miranda Rights

- Statements obtained cannot be used against the individual at trial (**Exclusionary Rule**)
- Evidence obtained as the result of the statements cannot be used against the individual at trial (**Fruit of the Poisonous Tree**)
- Non-Judicial Punishment (**NJP**) for military and administrative discipline for civilians does not equate to 'trial'
 - So information may be admissible



Right to Union Representative at Investigatory Interview (5 U.S.C. 7114(a)(2)(B))

- Weingarten Rights
 - Union representative present during “investigatory” interview
 - Right of employee not the union
 - Management not required to inform employee
 - Employee’s responsibility to know and request
- “Investigatory” interview
 - Questions intended to obtain information for disciplinary purposes or
 - Employee asked to defend conduct



Advisement of 18 U.S.C. 1001 False Statements

- Whoever knowingly and willfully falsifies or covers up by any trick, scheme or material fact i.e., makes any materially false statement or representation; or makes or uses false writings or documents that contain materially false, fictitious, or fraudulent statement or entry; shall be fined or imprisoned not more than 5 years, or both.



Immunity

- SECNAVINST 5430.57G - basic requirement to cooperate with an IG investigation
- Witnesses / suspects who invoke right to remain silent can be required to answer incriminating questions provided they are granted immunity



Immunity

- Military Personnel - GCMCA may grant immunity to military personnel
- Civilian Personnel (Kalkines) - U. S. Attorneys have authority to grant immunity to civilian personnel
 - Approach U.S. attorneys via NCIS



Subpoena Power

- DOD IG
 - Authority does not extend to subpoenas to provide testimony
- NAVINSGEN
 - None
 - Consent



Authority to Restrict Disclosure by Witness

- “Do not discuss what we have talked about with anyone else and that if anyone tries to talk to you about this interview you report it to me.”
- Authority to restrict discussions
 - Obstruction of justice
 - Duty to cooperate with the investigation
 - Appeal to privacy rights of the subject



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Legal Review of an IG Investigation



Legal Review Good Idea!

- Legal review **not required** in all hotline cases...but seeking assistance from legal counsel throughout the investigation:
 - Ensures the accuracy of the report
 - Reduces mistakes and re-work





Legal Review / Flag Endorsement Required

SECNAVINST 5370.5B Sec 9d and 5370.7c Sec 8a

- **Legal review in cases of “significant nature,” e.g.,**
 - **Cases resulting in disciplinary action**
 - **Detachment for Cause**
 - **Substantial monetary loss or property damage**
 - **Reprisal (whistleblower) or**
 - **Any investigation into O-6 Commanding Officer**
- **Legal review conducted by SJA or command counsel using template**
- **Flag endorsement for investigation of O-6 CO**



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Release of Information



Release of Information

- Types of release
 - For Official Use Only (FOUO)
 - Privacy Act (PA)
 - Freedom of Information Act (FOIA)



For Official Use Only (FOUO)

- IG investigations are conducted “For Official Use Only”
- Open case file – not releasable to personnel outside the DoD / DoN IG chain of command (FOIA b7a)
- Closed case file – releasable to persons who have an official “need to know”



Privacy Act (PA)

5 U.S.C. 552a

- Requires notice that info will be kept in a PA system, (i.e., retrievable by personal identifier)
- Protects privacy of records



Freedom of Information Act (FOIA) 5 U.S.C. § 552

- Federal law insuring the public's access to Government records
- Exemptions
 - b7a – open investigation
 - b7c – personal information



Release Authority

- NAVINSGEN is the release authority for all DoD IG and Navy investigations it has conducted (by agreement with DoD IG) or tasked to other DoN organizations
- All cases originating with a complaint to the hotline of another DoN organization are that organization's responsibility
- **Defer to the GCMCA or command FOIA office**



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Questions???